

VZCZCXRO4986
RR RUEHLMC
DE RUEHMU #2609/01 3521612
ZNR UUUUU ZZH
R 181612Z DEC 07 ZDK
FM AMEMBASSY MANAGUA
TO RUEHC/SECSTATE WASHDC 1830
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE
RUEHBO/AMEMBASSY BOGOTA 1819
RHEHNSC/NSC WASHDC
RUEHLMC/MILLENNIUM CHALLENGE CORP WASHDC
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC
RUCPDOG/DEPT OF COMMERCE WASHINGTON DC

UNCLAS SECTION 01 OF 02 MANAGUA 002609

SIPDIS

SENSITIVE
SIPDIS

STATE FOR WHA/CEN, WHA/EPSC, INL/LP, S/CT AND EEB/IFD
BOGOTA FOR FGROENE
TREASURY FOR SARA GRAY AND FINCEN
JUSTICE FOR OIA, AFMLS, NDDS
JUSTICE PASS TO OPDAT CDELUIGI
USDOC FOR 4332/ITA/MAC/WH/MSIEGELMAN
3134/ITA/USFCS/OIO/WH/MKESHISHIAN/BARTHUR

E.O. 12958: N/A

TAGS: [EFIN](#) [PTER](#) [ECON](#) [PGOV](#) [SNAR](#) [NU](#)

SUBJECT: NICARAGUA: NEW PENAL CODE UPDATES ANTI TERRORISM AND MONEY
LAUNDERING LAWS

Ref: A) MANAGUA 1743, B) MANAGUA 2185, C) MANAGUA 2351

MANAGUA 00002609 001.2 OF 002

¶1. (U) Summary: In November, Nicaragua's National Assembly passed a new Penal Code that includes new language on terrorism finance, money laundering, and crimes against the financial system. This language will allow Nicaragua's law enforcement to prosecute cases of financing of terrorist entities, transportation of bulk cash contraband, and non-drug related money laundering as independent crimes instead of having to tie them to a central crime such as drug smuggling. Despite these advances, Nicaragua's lack of a financial intelligence unit continues to limit the GON's ability to seriously investigate and prosecute specific cases at this time. End Summary.

¶2. (U) On November 13, Nicaragua's National Assembly passed a new Penal Code that, for the first time, defines terrorism financing as a crime and uses international definitions of money laundering. Nicaragua's police and prosecutors will now be able to prosecute cases involving the financing of terrorist entities, transportation of bulk cash contraband, and non-drug related money laundering as independent crimes instead of having to tie them to a central crime such as drug smuggling. Advocated by Nicaragua's Superintendent of Banks and the National Association of Private Banks, these new articles bring Nicaragua's legal protections of its financial sector up to international standards. The new penal code will go into effect within 60 days of being published in the official register "La Gaceta." The GON is publishing the code in portions, so there is no fixed date for the publication of the relevant articles.

The New Articles

¶3. (U) The new Penal Code brings Nicaragua in line with most international standards for fighting money laundering. Nicaragua's previous Penal Code, dating from 1974, did not list money laundering as a specific crime. As a result, money laundering not tied to drug cases was rarely investigated or prosecuted. Articles 282 and 283 of the new Penal Code define money laundering as an independent crime that can occur beyond territorial borders. Acts that now constitute money laundering include: illegal transportation of bulk

cash (per GAFI Special Recommendation IX), use of front companies or straw men, willfully ignoring an illegal movement of money, and inaction when one is in a supervisory position. Committing these crimes while a public servant is considered an aggravating circumstance, which increases the penalties. The greatest weakness to these articles is that they apply the lowest international standard for sentences (five to seven years).

¶4. (U) For the first time, Nicaragua's law clearly defines the financing of terrorism as a crime. Article 395 is based on international model language and covers generating, collecting, funneling, depositing, transferring, or administering legal or illegal funds that are used to commit an act of terrorism as defined in Article 394. The sentence is 15 to 20 years. If the act is committed through Nicaragua's financial system and/or by a public employee, the sentence is increased by five years.

¶5. (U) Article 280, which defines "Crimes Against the Banking and Financial System," provides a major step forward in the definition of actions that can harm the financial sector. Among the crimes specified in the article are hindering the work of the Superintendent of Banks, spreading unfounded rumors on the financial health of any entity, or causing damage to the assets of a financial institution. The development of this article can be directly tied to the failure of four major Nicaraguan banks in 2000-2001. The first failure, caused by a massive money laundering scheme run by a shell company through one of Nicaragua's largest banks, set off the chain reaction of failures. (Ref B) Many of the actions which caused the failures were not prosecutable because these crimes had not been specified in the previous Penal Code.

Comment

¶6. (SBU) For the National Assembly, the most controversial articles were 282 and 283, dealing with money laundering, because of the legal and political implications for former president Arnoldo Aleman. In 2003, Aleman was convicted of stealing government funds and money laundering and sentenced to 20 years. The ensuing political machinations to keep him out of jail were the basis of the famous "pacto" between the FSLN (Sandinista) and the PLC (liberal) parties which still dominates Nicaraguan politics. (Ref A) Post will report septel on recent developments in this case and how they relate to the new Penal Code.

¶7. (U) Aside from the political implications, these changes are an important advancement for Nicaragua to investigate and prosecute financial crimes. The lack of a financial intelligence unit, however, continues to limit the GON's ability to seriously investigate specific cases at this time. (Ref C and Septel)

TRIVELLI